



OFFICE OF THE POLICE COMMISSIONER
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April 7, 2015

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Gendyliss Nevarez**
Tax Registry No. 952050
61 Precinct
Disciplinary Case No. 2014-11302

The above named member of the service appeared before Deputy Commissioner Rosemarie Maldonado on February 4, 2014 and was charged with the following:

DISCIPLINARY CASE NO. 2014-11302

1. Said Police Officer Gendyliss Nevarez, while on-duty and assigned to the 123rd Precinct, on or about August 17, 2013, did fail and neglect to properly safeguard her service firearm, to wit: a Smith and Wesson (9mm, model 3914, serial number [REDACTED]).

P.G. 204-08, Page 2, Paragraph 7

**FIREARMS – GENERAL
REGULATIONS**

In a Memorandum dated March 25, 2015, Deputy Commissioner Rosemarie Maldonado found Police Officer Nevarez Guilty after she pleaded Guilty to Specification No. 1, in Disciplinary Case No. 2014-11302. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty. Police Officer Nevarez's misconduct in this matter warrants the forfeiture of twenty (20) vacation days as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

March 25, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Gendyliss Nevarez
Tax Registry No. 952050
61 Precinct
Disciplinary Case No. 2014-11302

The above-named member of the Department appeared before me on February 4, 2014, charged with the following:

1. Said Police Officer Gendyliss Nevarez, while on-duty and assigned to the 123rd [P]recinct, on or about August 17, 2013, did fail and neglect to properly safeguard her service firearm, to wit: a Smith and Wesson (9mm, model 3914, serial number [REDACTED]).

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS - GENERAL REGULATIONS

The Department was represented by Jennifer Kim, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The facts presented in this case are not in dispute and Respondent readily admits to her misconduct. Respondent was a probationary police officer at the time of the incident at issue in this case. On August 17, 2013, Respondent's regular day off, she went to a local beach with her [REDACTED]. Respondent testified that before leaving, she placed her Department issued firearm in a "travel safe box" and concealed it underneath the right passenger seat of a [REDACTED] in a compartment "camouflaged" by the vehicle's carpet. The safe box was not bolted to the vehicle but was locked with a key. Respondent explained that she felt it was safer to leave her unloaded firearm in the vehicle than take it with her. (Tr. 8-15)

The outing lasted approximately one-and-a-half to two hours. Her vehicle was parked within view, approximately thirty feet from where she and her family were located on the beach. Respondent admitted, however, that she lost sight of the vehicle while sunbathing and someone could have broken into the [REDACTED] and removed the safe box that contained her firearm. (Tr. 16-17).

Without ascertaining if her firearm was still in the [REDACTED], Respondent left the beach, drove back to her home and parked the vehicle in front of her residence. Respondent left her firearm inside the vehicle while she and her family went inside to prepare for a weekend trip. Respondent lost sight of the [REDACTED] for approximately twenty minutes. At some point she noticed that the vehicle was no longer in front of her building. Respondent called the [REDACTED] Precinct, identified herself as a police officer and advised them that there was a firearm in the missing vehicle. Respondent was informed that the [REDACTED] had been repossessed and towed away by [REDACTED] Towing company.

Respondent contacted [REDACTED], ascertained the [REDACTED]'s location and immediately went to pick it up. Once at the facility, she identified herself and informed an employee of the situation. When the employee could not locate Respondent's travel safe box inside the vehicle, he granted her access and she recovered the firearm. Both the towing company and Respondent notified the local police precinct about the situation and police officers met Respondent at the facility. Respondent retrieved her firearm approximately an hour after realizing the [REDACTED] was missing. (Tr. 11-12, 14, 18-20)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 9, 2012. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

As Respondent has pled guilty to the charge in this case, the only question to be addressed here is whether the forfeiture of 20 vacations days is an appropriate penalty. Respondent argues that she was a rookie police officer at the time, was trying to do her best, has learned much from the incident and now makes better plans for safeguarding her weapon. Respondent further argues that this incident was a very unique case of bad luck and that the firearm was quickly recovered.

There are many factors to be considered in determining if a penalty should be mitigated. These include the nature and seriousness of the offense; the notice provided to the Respondent that the behavior was improper; the Respondent's past work record which

includes the length of service and past performance on the job; the consistency of the penalty imposed for similar misconduct; and Respondent's demonstration of an understanding of the wrongfulness of their actions and an ability to be rehabilitated.

In this case, the offense is undeniably a serious one. An officer, entrusted to protect and safeguard the public, must be held accountable for securing his or her firearm. Instead, Respondent left her firearm unattended and out of sight twice during the course of one day. Even accepting Respondent's testimony at face value that she went to the beach and remained on the grass near her car in the parking lot the whole time, by her own admission, someone could have broken into her car while she was sunbathing and taken the weapon. Respondent then provided a second opportunity for her firearm to be taken when she left it unattended in her vehicle while it was parked in front of her residence. Respondent left the firearm vulnerable to theft a third time that day when she informed the towing company employee that her firearm was inside her vehicle and gave him information about its location so that he could retrieve it for her. Each of these missteps compounded Respondent's violation of the Patrol Guide mandate and created separate opportunities for the firearm to be taken and used to endanger the public.

I reject the argument that the misconduct was less serious or that the penalty should be mitigated because the firearm was recovered. That a firearm is found and returned does not negate the misconduct of failing to properly secure it in the first place. With regard to notice, Respondent's argument that the Patrol Guide does not provide guidance is incorrect and cannot be considered a mitigating factor. In fact, the Patrol Guide specifically prohibits leaving a firearm unattended in a vehicle. With regard to Respondent's employment record, I find nothing that would mitigate the penalty in this

case. Respondent has a very short career history with the Department. If anything, Respondent, having received her training relatively close in time to the incident should have been very cognizant of the requirements of the Patrol Guide and the proper method for securing her firearm. With regard to remorse, Respondent credibly testified that she appreciates that her actions in failing to secure her weapon were improper. Although it is important that Respondent learned her lesson, this subsequent recognition does not fully mitigate her failure to recognize her obligations on August 17, 2013.

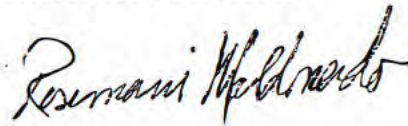
As to consistency of penalties, it must be recognized that such consistency is of vital importance. In order to succeed, any system of justice must meet the highest standard of fairness. The standard penalty for a first offense of failing to safeguard a firearm is the forfeiture of 20 vacation days. In this case, however, I am concerned that an across the board penalty of 20 vacation days falls short of our standard of fairness because it has a disparate impact on newly appointed police officers such as Respondent.

Rookie police officers only accrue 10 vacation days per year. This means that for officers serving one to three years, the forfeiture of 20 days is the equivalent of relinquishing virtually all annual leave for close to two years. For more senior officers, including many of those involved in the cases cited by the Department Advocate, the impact of a 20-day forfeiture is the equivalent of relinquishing annual leave for only one year. I acknowledge this tribunal's longstanding precedent of imposing this standard penalty without regard to tenure. I note, however, that as recently as 2008, rookie police officers were also entitled to 20 vacation days a year. Thus, prior to 2008, a 20 day penalty had a more proportionate impact on all officers regardless of tenure. I believe it

serves the interests of justice to address the disparate impact that this across the board penalty now has on newly appointed officers.

Taking into account Respondent's disregard of her firearm at several points during her regular day off and her annual leave accrual rate, I recommend the forfeiture of 10 vacation days as the appropriate penalty.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials



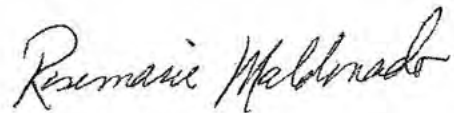
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GENDYLISS NEVAREZ
TAX REGISTRY NO. 952050
DISCIPLINARY CASE NO. 2014-11302

Respondent was appointed to the Department on January 9, 2012. Her last three annual evaluations were as follows: she received an overall rating of 3.0 "Competent" in 2014, 2013 and in 2012. [REDACTED]

On September 10, 2014, she was placed on Level II Disciplinary Monitoring as a result of this case. She has no prior formal disciplinary record

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials